

STEPHEN A. ZAPPALA, JR.
DISTRICT ATTORNEY



OFFICE OF THE DISTRICT ATTORNEY

County of Allegheny

436 GRANT STREET, 401 COURTHOUSE ♦ PITTSBURGH, PENNSYLVANIA 15219-2489
PHONE (412) 350-4377 ♦ FAX (412) 350-3312

Ryan H. James, Esquire
1514 Lincoln Way, Suite 301-302
White Oak, PA 15131

June 2, 2016

Celia B. Liss, Esquire
Open Records Officer
City of Pittsburgh
313 City-County Building
414 Grant Street
Pittsburgh, PA 15219

In re: Open Records Appeal

Dear Mr. James and Ms. Liss:

I am the Open Records Appeals Officer for the District Attorney of Allegheny County. On May 26, 2016 I received from Mr. James an appeal of a denial of a Right To Know Request. That denial was from the City of Pittsburgh. In that request Mr. James' client, Ms. Ellen Kochu, was seeking certain information related to the disappearance and subsequent death of her son, Paul Kochu. Relevant to this appeal Ms. Kochu sought, *inter alia*:

1. Any witness statements;
2. The names and badge numbers of all officers involved with the above investigation;
3. The location and dates of all areas searched for Paul Kochu;
4. Records pertaining to the means of searching for Paul Kochu (*i.e.* canine searches, aerial surveillance, etc.); and
5. Any leads pursued by the City of Pittsburgh Police, or any other agency, to locate Paul Kochu[.]

In a letter dated May 5, 2016 Open Records Officer Liss reached the following resolution:

1. *Any witness statements;*

This part of the request is denied. Such statements are investigational in nature and thus exempt from production under RTKL. See 65 P.S. §67.708(b)(16)(ii).

2. *The names and badge numbers of all officers involved with the above investigations;*

This part of the request is partially granted. See the Incident Report enclosed herein. Any other names and badge numbers would be part of investigational reports that are exempt from production. See 65 P.S. §67.708(b)(16)(ii);

3. *The location and dates of all areas searched for Paul Kochu;*

This part of your request is denied. The records you seek are investigational in nature and thus exempt from production under RTKL. See 65 P.S. §67.708(b)(16)(ii).;

4. *Records pertaining to the means of searching for Paul Kochu (i.e. canine searches, aerial surveillance, etc.)*

This part of your request is denied. The records you seek are investigational in nature and thus exempt from production under RTKL. See 65 P.S. §67.708(b)(16)(ii); 65 P.S. §708(b)(17)(ii);

5. *Any leads pursued by the City of Pittsburgh Police or any other agency, to locate Paul Kochu;*

This part of your request is denied. The records you seek are investigational in nature and thus exempt from production under RTKL. See 65 P.S. §67.708(b)(16)(ii); 65 P.S. §708(b)(17)(ii).

As you know, 65 P.S. §67.708 (b)(16) exempts from disclosure:

(16) A record of an agency relating to or resulting in a criminal investigation, including:

* * * *

(ii) Investigative materials, notes, correspondence, videos and reports.

§67.708(b)(17) exempts from disclosure:

(17) A record of an agency relating to a noncriminal investigation, including:

* * * *

(ii) Investigative materials, notes, correspondence and reports.

As the Office of Open Records explained in *Jones v. Pennsylvania Game Commission*, OOR Dkt. AP 2009-0196 records pertaining to a closed criminal investigation remain protected because Section 708(b)(16) expressly protects records relating to the result of a criminal investigation and thus remain protected even after the investigation ends. See also, *State Police v. Office of Open Records*, 5 A.3d 473 (Pa. Cmwlth. 2010); *Sherry v. Radnor Twp. School District*, 20 A.3d 515 (Pa. Cmwlth. 2011). Courts have turned to CHRIA for a definition of “investigative information.” See *Hunsicker v. Pennsylvania State Police*, 93 A.3d 911, 912 fn.#6

(Pa. Cmwlt. 2014) (“[i]nformation assembled as a result of the performance of any inquiry, formal or informal, into a criminal incident or an allegation of criminal wrongdoing....”).

First, permit me to express my condolence to the Kochu family for the loss of their son. Also, I do understand the frustration that can occur when a family seeks information under these types of situations and said information is not forthcoming.

As to items 1, 2, 3, 4, and 5 listed above, I must rule in favor of the City. I realize that there was a community effort to try to find Paul Kochu. Even though the incident report may be labeled ‘miscellaneous’ the investigation was conducted through the Pittsburgh Police Missing Persons Unit. I appreciate requester’s argument that this was not a criminal investigation because it was conducted in an effort to find a missing person, but I still believe that it was a criminal investigation as it utilized the resources of the police department and circumstances of the disappearance were such that possible foul play and criminality were always real considerations. I certainly may be mistaken on that point but could find no case law to cause me to think differently. The City also relied on 708(b)17(ii) for items 4 and 5 and I have to agree that the section would apply to those items, also; thus making them exempt.

I understand and appreciate attorney James’ argument on waiver but don’t think that the exercise of agency discretion under §67.506 constitutes a waiver nor do I think that discretionary disclosure converts exempted records into public records.

As to item 2, it must be further noted that the starting point for redaction under 706 is that the information to be provided is contained in a “public record.” An incident report is not a public record. *See Hunsicker, Id., at 913* (“In any event, no matter what is contained in an incident report, incident reports are considered investigative materials and are covered by that exemption.”). Thus the law does not require the City to provide that information. The fact that the City did provide one name and badge number isn’t a waiver. My personal belief that the City could have been more open in this one particular area is of no relevance as I am not privy to the concerns the City might have had in that regard. I only note it because this is the fourth incident in Allegheny County I have been confronted with where a family of a suicide victim attempts to gain information surrounding their loved one’s death and is unable to do so. In fairness to the City, the other three did not involve the City.

As a result, I must decline your request. Please be advised that pursuant to Section 1302 you have 30 days to appeal my decision to the Court of Common Pleas of Allegheny County.

Very truly yours,

Michael W. Streily
Deputy District Attorney
Open Records Appeals Officer